

WEST BEND MUTUAL INSURANCE)
COMPANY, RICK L. CHIANELLI and)
JEAN A. CHIANELLI,)
Plaintiffs,)
)
v.) Case No.:
)
HOME DEPOT U.S.A., INC. and)
WHIRLPOOL CORPORATION,)
)
Defendants.)

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Whirlpool Corporation (“Whirlpool”), expressly reserving all rights otherwise to respond to this lawsuit, hereby removes the above-captioned case, which was filed in the Circuit Court of Washington County, Wisconsin, as Case No. 2021CV000364, to the United States District Court for the Eastern District of Wisconsin.

1. On or about July 28, 2021, Plaintiffs West Bend Mutual Insurance Company, Rick L. Chianelli and Jean A. Chianelli (“Plaintiffs”) filed this product liability action entitled *West Bend Mutual Insurance Company, et al. v. Whirlpool Corporation, et al.*, Case No. 2021CV000364, in the Circuit Court of Washington County, Wisconsin.

2. On August 3, 2021, Plaintiffs effectuated service on Defendants Whirlpool and Home Depot U.S.A., Inc. (“Home Depot”) of its Summons and Complaint. *See* Summons and Complaint, collectively attached hereto as **Exhibit A**.

3. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a) on the basis of diversity of citizenship and amount in controversy.

4. This case is removable pursuant to 28 U.S.C. § 1441(b).

5. Pursuant to 28 U.S.C. § 1446(a), Whirlpool has attached to this notice “a copy of all process, pleadings, and orders served upon” it. See **Exhibit A**.

DIVERSITY OF CITIZENSHIP

6. Plaintiff West Bend Mutual Insurance Company (“West Bend”) is a Wisconsin corporation with its principal place of business in West Bend, Wisconsin. Thus, Plaintiff West Bend Mutual Insurance Company is a citizen of Wisconsin.

7. Plaintiffs Rick L. Chianelli and Jean A. Chianelli are individuals residing at 8565 Fairview Drive, Allenton, Wisconsin. Thus, Plaintiffs Rick L. Chianelli and Jean A. Chianelli are citizens of Wisconsin.

8. Defendant Whirlpool is a Delaware corporation with its principal place of business in Michigan. Thus, Whirlpool is a citizen of Delaware and Michigan.

9. Defendant Home Depot is a Delaware corporation with its principal place of business in Georgia. Thus, Home Depot is a citizen of Delaware and Georgia.

10. As of the date of this filing, Home Depot has not appeared by counsel. However, a representative for Home Depot has communicated with Whirlpool’s counsel and provided consent to this removal. Thus, this Notice of Removal meets the consent requirements of 28 U.S.C. § 1446(b)(2)(A).

11. Plaintiffs’ Complaint names a fictitious defendant, John Doe. 28 U.S.C. § 1441(b) provides: “In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.” See *Howell by Goerdts v. Tribune Entertainment Co.*, 106 F.3d 215, 218 (7th Cir. 1997) (“And naming a John Doe defendant will not defeat the

named defendants’ right to remove a diversity case if their citizenship is diverse from that of the plaintiffs.”). Accordingly, the citizenship of the John Doe defendant should be disregarded.

12. Neither Whirlpool nor Home Depot, the only parties in interest properly served as named defendants, are citizens of the state of Wisconsin. Therefore, complete diversity exists between all the parties.

AMOUNT IN CONTROVERSY

13. The allegations set forth in the Complaint establish that the amount in controversy in this case exceeds \$75,000 exclusive of interest and costs.

14. Plaintiffs allege property and personal injury damages under claims for strict product liability and negligence relating to a Whirlpool-manufactured range.

15. Plaintiff West Bend is seeking recovery for property damages in “excess of \$75,000.” *See* Plaintiffs’ Complaint, at ¶ 25. Therefore, the amount in controversy for Plaintiff West Bend’s alleged property damages alone satisfies the jurisdictional requirement.

16. Additionally, Plaintiffs Rick and Jean Chianelli are seeking recovery of “an unspecified amount” for personal injury damages, including “severe third degree burns.” *See* Plaintiffs’ Complaint, at ¶¶ 20, 23, 24. Wisconsin jury verdicts for third-degree burns often exceed \$100,000. *See, e.g., Nortch v. Neyralnd, et al.*, No. 93CV000636, 1995 WL 1788493 (Wis. Cir. Jan. 1, 1995) (plaintiff verdict of \$248,915 in product liability case involving burn injury); *Estate of Thomas v. Johnson-Towers*, No. 2017-CV-002623, 2020 WL 6286232 (Wis. Cir. Feb. 10, 2020) (plaintiff verdict of \$178,520 in negligence case involving third-degree burn injury).

17. Accordingly, the amount in controversy requirement has been met to establish subject matter jurisdiction based on diversity.

OTHER REQUIREMENTS FOR REMOVAL

18. Whirlpool and Home Depot were served with the Complaint on August 3, 2021. Thus, this Notice of Removal is being timely filed within the thirty (30) days of service of initial pleadings pursuant to 28 U.S.C. § 1446(b).

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) and 1446(a) because the U.S. District Court for the Eastern District of Wisconsin, is the federal judicial district embracing the Circuit Court of Washington County, Wisconsin, where the state court action was originally filed.

20. Written notice of the filing of the Notice of Removal will be served on Plaintiff's counsel and filed with the Circuit Court of Washington County, pursuant to 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal to the United States District Court is attached hereto as **Exhibit B**.

21. As of the date of this filing, there are no pending motions in this matter.

CONCLUSION

WHEREFORE, Defendant Whirlpool Corporation requests that the above-entitled matter currently pending in the Circuit Court of Washington County, Wisconsin, be removed to the United States District Court for the Eastern District of Wisconsin.

Dated this 27th day of August, 2021.

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CERTIFICATION OF SERVICE

I, George Burnett, hereby certify that a true and correct copy of the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on August 27, 2021.

/s/ George Burnett

(202119.015-#3936042)